

COMMISSIONERS APPROVAL

CHILCOTT 

LUND 

THOMPSON 

TAYLOR (Clerk & Recorder)

Date.....October 4, 2006

Members Present.....Commissioner Betty Lund and  
Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board met with Administrative Director Skip Rosenthal in regard to several administrative matters as follows:

Commissioner Thompson made a motion to have Chairperson sign the Safe Kids/Safe Communities work plan to the State of Montana for the funding for fiscal year 2007. Commissioner Lund seconded the motion and all voted "aye".

Commissioner Thompson made a motion to approve of the consultant services agreement from October 1, 2006 through January 12, 2007 for the Corvallis Bridge project with CTEP. Commissioner Lund seconded the motion and all voted "aye".

In regard to the Florence CTEP project, Skip addressed the substantial project completion. The Board concurred that Skip, as the liaison for this project, should sign off on this substantial completion paperwork as did the Department of Transportation.

Commissioner Thompson made a motion to sign the work experience program through Human Resource Council for work experience employees. Commissioner Lund seconded the motion and all voted "aye".

Skip also presented several employee action forms for signature.

In regard to the Darby CTEP project discussion included the limited use and cost of an engineer, which is John Horat. The bid book and plans have been sent to the State for review. Skip noted no deadlines have been missed for funding but the actual work product is behind the contract dates. Skip stated site work will actually be done after this winter.

In other business the Board met with Planning Director Karen Hughes regarding the subdivision regulation revision process as a result of Senate Bill 116 which was to be

implemented by October 1<sup>st</sup>. Also present at this meeting was Civil Counsel James McCubbin and numerous citizens.

Karen noted she bears some responsibilities for not meeting this deadline, but due to their workload she was not able to help meet the deadline. She cited County Attorney George Corn's opinion on how not meeting the deadline affects the subdivisions. She stated there are approximately 30 subdivisions in the works for sufficiency review, and according to the legal opinion, they should not process them until the new regulations are in place; as they must meet the new regulations when they are adopted.

They are currently in the revision process and Karen noted she has worked on a draft which planning staff will work to complete. They hope to have it done within the next one to two weeks. After that time, the County Attorney's Office will need to review the proposed changes. Once complete they can issue a public review draft, hold a public hearing and adopt. Karen recommends the Planning Board be involved; therefore if the Commissioners agree, a joint public hearing could be held. Karen noted of the 30 subdivisions; two are close to being complete (waiting for road engineer certification).

Karen relayed they have 5- 6 projects that have not been assigned to a planner. Thus a continued delay; delay on subdivision and subdivision exemptions and increases the possibility of law suits. She stated if they continue the subdivisions without new regulations, then they also face litigation. Karen stated it was the planning staff's recommendation to follow civil counsel's advice and notify each applicant of the procedural changes. They will continue to prioritize this issue in order to move it as quickly as possible. One of the consequences of their delay is the expansion of the backlog they currently have.

Some discussion occurred on the dates of proficiency and submittals etc.

James stated to summarize this issue; there is nothing they can do to be 100% compliant with the law. Thus, the best option is to amend the regulations as quickly as possible. For those subdivisions in the process, they should wait on those until the new regulations are in place. James felt there was less chance of the county being sued if they amend the subdivision regulations.

Commissioner Lund asked if all of the subdivisions Karen provided in the chart would be placed on hold and their sufficiency would fall under the new regulations. Karen stated the sufficiency review process under new law is to do element review then sufficiency review. Until planning staff determines the application is sufficient, it is vulnerable to go under the regulations. She stated even if they could have changed the regulations on October 1<sup>st</sup> as required by law, all of the new subdivisions would have been under the new regulations.

Commissioner Lund asked what the applicants would have to do when new regulations are approved. Karen stated more requirements may be on application list and at this point they do not know what those will be.

Public comment was now called for.

Surveyor Steve Powell asked what the new elements are going to be. James stated there are four categories: pre application procedure, sufficiency review and list, new information hearing procedure & procedures, and criteria for processing exemption requests. Steve stated his recommendation is that Commissioners say 'whatever is sufficient today moves forward'. He stated what happens now is that this process goes on and on and the consultants and the applicants never know what comes out. Steve suggested they 'let the consequences of insufficient applications sort itself out'. James stated the new bill actually is a check list review with specific time lines. Karen stated it also makes it clear as to what the developers are to submit. Steve asked how many of the subdivisions are likely to have the litigation risks, and by holding those up the county might increase their risk of litigation.

Donald Morton stated there seems to be a difference of opinion on this issue. He has three-fourths of the lots on Karen's list of 30 subdivisions. He stated one attorney's opinion is that the application is submitted under the regulations at the time of submittal. Thus any projects filed before October 1st are subject to the regulations that were in place at the time. He stated both he and his attorney feel very strongly about this opinion and were surprised to read James McCubbin's memo of September 29, 2006.

James stated he considered these types of comments before he submitted his memo (opinion). He stated one way to deal with this is if an applicant wants to proceed, then they could negotiate something with their attorney in order to avoid any litigation risk for the county.

Kristen Smith of WGM Group stated she understands the need to talk about law suits, but she feels this 'great' risk is inflated as the county is going to proceed in good faith for the revision of the regulations. She also relayed that in order to be fair to those applicants; it seems unreasonable to suspend their projects.

Kent Kearns stated he is disappointed that planning and the Commissioners have dropped the ball by not getting the required changes done by October 1<sup>st</sup>. This has put developers and Commissioners in a bad situation. He stated Planning has not done their job and they have had a year to put the new regulations into place. He stated the new regulations basically address the time frame. If the change of regulations suddenly becomes a priority now, after the dead line date, then a new back log of subdivisions will take place. He stated the planning staff can not make their time lines now. How will the new regulations allow them to meet the new time lines?

Commissioner Lund stated that is a good question as the county is not meeting the current deadlines. Kent stated they have waited 30 days for a 10 day time line. He stated this costs him money and he is disappointed that it is being addressed now. He stated if the planning office needs help, then get them help.

Terry Polumsky echoed Kent's sentiments. She stated six to seven months ago they held a forum and this issue was addressed. But nothing ever developed from that forum. One suggestion was to hire a contract planner. Plus the highway 93 interim zoning has not moved forward. She stated the planning office was closed for a half day for several months, then they opened up for a full day, but they are still not caught up. Terry felt the citizens deserve and the county needs to be accountable to the citizens.

Kathleen Driscoll thanked the county workers for their diligence but felt they are overworked and unless people see this on a daily basis they don't fully understand.

Kent stated he did not mean to offend anyone but this is frustrating. Commissioner Lund stated it is frustrating for employees also.

Paul Wilson stated this process has continued to spiral downward for subdivision reviews. He stated this particular move by delaying will continue to create a financial burden to the private citizens and developers. Commissioners are choking the process and it affects everyone in the valley. The valley is doing better economically and the Commissioners need to look at the big picture. If the county can negotiate with the applicants, then they need to do that. There are a number of subdivisions that are close to sufficiency and to turn them around at this time would be quite a blow to those in the process.

Donald Morton stated given the seriousness of the matter, (he speaks for being the applicant of some 1,500 lots), and the fact that the law seems quite clear to him, he agrees the county should follow the law. He stated the developers are willing to back it up because of the commitment they have made already (millions of dollars). He stated they do want to work with the county, but the process is unbelievable. He dittos what Kent has stated. The fees they pay are not reported correctly in the paper. He stated there is a movement by some that want to stop things in the county. He stated the developers are here in order to present the other side of the coin.

Kristen appreciates the number of subdivisions pending on the list, but she stated it is important to remember that Ravalli County is not alone in this western corridor. There are opportunities with other counties to find a solution to these issues.

Commissioner Lund stated the Commissioners met with other counties at their MACo Conference recently and discovered that not all counties have met their deadline. She stated they did not ask the other counties 'if they stopped their subdivision process' but they can check with some of the counties and find out how or if they are processing the subdivisions that were already in the process during the October 1<sup>st</sup> deadline.

Commissioner Thompson stated he does not know what is going on in other counties. He understands the frustration from the citizens, and he too has frustrations. But the State has established certain time lines they must follow. He stated they have continued to increase the staff in planning, and the staff is crammed into a small space. He also relayed he understands they do not meet the deadlines established by the subdivision

regulations. The Commissioners have met with other fast growth counties but they are a small minority in the state. Some eastern counties have one subdivision per year and they are actually losing population. He felt they need to review this from a legal perspective, not from an economic view point. He also stated he is not comfortable making any decisions during this meeting, but rather wants to 'digest' what the public has said. However, he can not see how he can override James' memo by allowing any of the subdivisions to move forward. He understands it does cost people time and money but it is important to follow the legal opinion of counsel.

Kent asked if they can still go through the sufficiency review process then apply the new regulations. James stated his recommendation is that those who have received sufficiency be able to move forward. For those that have not met sufficiency, they must wait until the regulations are approved. James stated even with the new law, they can anticipate some things will remain the same.

Torri Nobles asked if they can set a date aside now for the regulations giving a 'line in the sand' so to speak. She felt that date might help things move along. She also suggested putting the information out on the web site in order to obtain public comment now which should also help speed the process up.

James stated they can not set a public hearing date until they have the draft regulations. It was also agreed to hold one public hearing with both the Planning Board and County Commissioners.

Paul asked for clarification on the process. He asked if they were going to stop work on all projects that do not have sufficiency today; then when the regulations are approved in four to six weeks, they will begin the process again? He stated he was uncomfortable with that because it actually slows the applications up by five to six months. Karen stated they could consider looking at sufficiency, just not give approval by way of a letter. Paul stated there is no definition of a time line. He stated Planning has had a whole year to change the regulations, but it is still not done. He stated this is absolutely shocking.

James stated if they continue to grant sufficiency without regulations, it causes potential legal issues. He stated they must proceed quickly to adopt the regulations, and it should have been done no later than last Friday.

Donald stated probably 3/4<sup>th</sup> of the subdivisions on the list are his submittals. He feels they should be continued in the process and not be held up. He stated James' opinion is different than what his attorney stated. Don agrees the law needs to be followed, but does not feel James has the correct interpretation of the law. He stated he has two legal firms in Missoula that do not have the same interpretation as the Ravalli County. He stated some people like to sue in order to stop the process. But, at this point he does not expect his submittals to be held up as he will not tolerate this.

Commissioner Lund suggested they explore what other counties have adopted and see what can be done in order to negotiate with subdivision applicants so the county does not get sued.

James stated he did visit with Attorney John Tabaracci about this issue and will take his written opinion into account.

Commissioner Thompson stated he would suggest planning follow James' opinion and then continue this meeting after 'digesting the comments made here today'.

James stated planning will not issue any final sufficiency letters, but planning can explore addressing the sufficiency of the applications while they are waiting for the regulations to be passed. He reiterated that the final determination letter should not go out to any applicants.

Kristin stated she did not feel that was a workable solution, as the county would be proceeding without knowing what the rules are. James indicated he is simply attempting to provide a 'working solution' and he did not know if it would in fact work or not. He stated the point of the public hearing is to hear what the public has to say, as there might be some ideas that need to be included.

Chris Palin asked what the legal ramifications are if they county does not follow state law, and does the county follow a current list and amend as needed? Commissioner Lund stated 'we pretty much do what they want, but we need to change the subdivision regulations by public hearing'. James stated the current regulations were current up until Friday due to the changes in Senate Bill No. 116 that was enacted October 2005. Chris asked if the changes required were so specific then why it is taking so long to make the changes. She stated she does not understand what the hold up is.

Karen stated state law is specific in some areas and in some areas they are not specific. James stated if the county delays on subdivisions we face legal consequences. Chris stated unless law suits are threatened, then it is usually not a priority to the county. Commissioner Lund thanked the developers who have been patient and not threatened litigation; until now.

Donald addressed one subdivision that has received a letter of sufficiency and it has still been three months in the waiting stages. He stated developers are not suit happy, but they are just about there and feel there is no more choice. He stated the need to make the regulation changes was discussed six months ago. He asked the Commissioners if they 'do not pay attention to us unless we sue'. He stated they want to work with the county but when they see this kind of inaction, and then maybe they need to consider litigation. We pay our fees, follow the time line that the county sets up (yet the county does not follow their own time line). Going under the new regulations might be their 'tipping point' and they may find they have no other choice.